

**COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. 03-MSRC-001**

**COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF MINES AND MINERALS**

COMPLAINANT

v.

DAVID GIST, ALFRED GIBSON, et al

RESPONDENTS

**FINAL ORDER REGARDING
RESPONDENT ALFRED GIBSON**

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant and Respondent Alfred Gibson, and the members of the Commission having reviewed the Settlement Agreement filed on April 1, 2003 in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY ORDERED as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The Respondent, Alfred Gibson's Shotfirer and Drill Operator's Certificate, # LO-***-**, issued by the Commonwealth of Kentucky, shall be **SUSPENDED** for a period of one (1) year, effective March 31, 2003;
3. The Respondent, Alfred Gibson, shall be required to complete an eight (8) hour training course for blasters given by the KDMM at their Barbourville office on or before May 1, 2003;
4. Respondent Gibson shall be required to re-take and pass the blaster's examination given by the KDMM before the suspension will be lifted

and said shotfirer and drill operator's certificate will be returned to him. The suspension of said certificate shall continue indefinitely, until Respondent Gibson passes the blaster's examination;

5. The Settlement Agreement signed by the parties and filed with the Commission shall be incorporated by reference and attached hereto;

6. This Final Order shall be considered to constitute a "first offense" as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent Gibson, resulting in an adjudication of guilt by the Commission, shall be deemed "subsequent offenses" as defined by 805 KAR 8:010, Section 1(13); and

7. This Final Order represents a final disposition of all issues between the Complainant, KDMM, and the Respondent, David Gibson, in this matter. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission. Pursuant to KRS 351.194(8), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of an order.

Entered this _____ day of May 2003.

BAYARD V. COLLIER, CHAIR
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER REGARDING RESPONDENT ALFRED GIBSON was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this _____ day of May 2003:

ALFRED GIBSON

BEAR BRANCH KY *****

And by regular mail, postage pre-paid to:

DAVID GIST

GIRDLER KY *****

And by messenger mail to:

COMMISSIONER FRANK DELZER
DEPT. OF MINES & MINERALS
1025 CAPITAL CENTER DRIVE
FRANKFORT KY 40601

HON. TONY OPPEGARD
GENERAL COUNSEL
DEPT. OF MINES & MINERALS
1025 CAPITAL CENTER DRIVE
FRANKFORT KY 40601

And the original shall be kept on file:

MINE SAFETY REVIEW COMMISSION
132 BRIGHTON PARK BLVD.
FRANKFORT KY 40601

DIANE SCHULER FLEMING
GENERAL COUNSEL
MINE SAFETY REVIEW COMMISSION

KENTUCKY MINE SAFETY REVIEW COMMISSION

KENTUCKY DEPT. OF MINES & MINERALS)	
)	
Complainant)	
)	
v.)	Administrative Action No. 03-MSRC-001
)	
DAVID GIST, ALFRED GIBSON, ROLAND)	
DAUGHERTY, FREDDIE JONES &)	
CHARLES MOORE)	
)	
)	
Respondents)	

SETTLEMENT AGREEMENT BETWEEN KDMM & ALFRED GIBSON

Come the Complainant, the Kentucky Department of Mines & Minerals (“KDMM”; “the Department”) and Respondent Alfred Gibson (“Gibson”), and hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration for the dismissal of this action against him and the cancellation of the hearing scheduled for May 8, 2003, Gibson - without admitting the allegations made against him in KDMM’s Complaint - hereby agrees to the **SUSPENSION OF HIS SHOTFIRER AND DRILL OPERATOR’S CERTIFICATE (# LO-***-**) FOR A PERIOD OF ONE (1) YEAR**, effective upon the signing of this Settlement Agreement by both parties. Gibson agrees to turn over his shotfirer and drill operator’s certificate to a representative of KDMM on or before March 28, 2003.

In addition, within thirty (30) days after the signing of this Settlement Agreement by the parties, Gibson must complete an 8-hour training course for blasters given by the Department at the Barbourville KDMM office. As part of that training course, Gibson must meet with Johnny Greene, KDMM's deputy chief accident investigator, regarding safe blasting procedures. After completing the training course for blasters, Gibson must also pass the blasters' examination given by KDMM before his shotfirer and drill operator's certificate will be reinstated. That is, the suspension period regarding Gibson's shotfirer and drill operator's certificate will continue indefinitely until Gibson passes said examination.

Gibson further agrees that this Settlement Agreement, and any final order issued herein by the Mine Safety Review Commission ("the Commission"), will be considered by the Commission to constitute a "first offense", as that term is defined at 805 KAR 8:010, Section 1 (5); and that any future adjudication against him by the Commission - regarding a separate alleged offense - will be deemed a "subsequent offense" as defined at 805 KAR 8:010, Section 1 (13).

The parties state that they have carefully read and considered this Settlement Agreement (or the Respondent has had the Agreement read to him) prior to signing the Agreement, and that they understand and agree to its terms and provisions. KDMM and Gibson acknowledge that there are no other promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.

ALFRED GIBSON

Bear Branch, Kentucky *****

FRANK X. DELZER, Commissioner
Kentucky Dept. of Mines & Minerals
P.O. Box 2244
Frankfort, Kentucky 40602

DATE

DATE

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Settlement Agreement was mailed this _____ day of March, 2003, to: David Gist, *****; Girdler, Kentucky *****; Alfred Gibson, *****; Bear Branch, Kentucky *****; Roland Daugherty, *****; Williamsburg, Kentucky *****; Freddie Jones, *****; Williamsburg, Kentucky *****; and Charles Moore, *****; Williamsburg, Kentucky *****.

TONY OPPEGARD
General Counsel